PROVINCE OF LOWER CANADA.

COURT OF APPEALS.

Joseph François Perrault &
William Green, Esqrs. Applts.

AND

François Baillargé, Respdt.

THE APPELLANTS' CASE.

PROVINCE OF LOWER CANADA.

COURT OF APPEALS

PROVINCE OF LOWER-CANADA. } *Court of Appeals.*

JOSEPH FRANÇOIS PERRAULT & WILLIAM GREEN, *Esquires*, Appellants.

Vs.

FRANÇOIS BAILLARGE', Respondent.

In Appeal from a Judgment of Dismissal in the Court of King's Bench for the District of Quebec, in a Cause there in which the above-named Appellants, Joseph François Perrault *and* William Green, *were the Plaintiffs and the above-named* François Baillargé *was the Defendant.*

APPELLANTS' CASE.

THIS was an Action brought in the Court of King's Bench at Quebec by the above-named Appellants, for fees due to them as Clerks of the Peace for the District of Quebec, from the Defendant for the proceedings in a considerable number of prosecutions instituted by him, as Road Treasurer for the City of Quebec, against persons for non-payment of their Cotisations or Assessments upon houses, Compositions for personal Labour on the Highways and Contributions for horses, in the Spring of eighteen hundred and thirteen.

The Declaration is a common one in *indebitatus assumpsit* for fees, with a *quantum meruit* and the usual money counts, to which the Defendant in the Court below pleaded the general issue *non assumpsit*, whereupon issue was joined.

The merits of the Case, as appearing from the Evidence, are as follows:—

The Defendant having been recently appointed Road Treasurer for the City of Quebec, upon the death of Pierre Florent Baillargé the former one, delivered in to the Appellants, on the fifteenth of January, eighteen hundred and thirteen, a list or schedule containing eight hundred and twenty-four names of Defaulters, who had neglected to pay their Cotisations, Compositions and Contributions, with a direction or order prefixed to it, in the following words:

Messieurs les Greffiers de la Paix sont autorizés de poursuivre les Délinquants mentionnés dans ce compte.

Québec, le 15 Janvier, 1814. (Signé) F. BAILLARGE',
Trésorier des Chemins.

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In consequence of this direction and by the assent of the Magistrates, eight hundred and eighty-six prosecutions were instituted (there being several causes of action against some individuals amongst the Defaulters) and regularly proceeded in against all those persons who could be found.

The prosecutions terminated variously.—Three hundred of the Defendants were convicted, some of the Prosecutions relinquished and some of them dismissed upon proof.

The fees for the whole of the proceedings according to the Tariff established at the Quarter Sessions in April, one thousand eight hundred and eleven, (an authenticated copy of which was fyled in the cause, and constitutes No. 10 in the record,) amounted in the whole to Three hundred and seventy-one pounds ten shillings and ten pence, of which there still remained one hundred and seventy pounds thirteen shillings and four pence due the Appellants, after deducting a sum of two hundred pounds, seventeen shillings and six pence, for which they have given credit on account. [See No. 8, in the Record.]

On the hearing of the cause it was objected on the part of the Defendant, that he was not liable to this demand, on account of its having been incurred by him in his capacity of a public officer, to which it was answered on the part of the Plaintiffs that this was not one those cases in which he either had pledged or would have been authorized to pledge the credit of the Government, and did not therefore by any means fall within the purview of any of those cases in which it has been holden that public officers acting ostensibly on the part and under the authority of the Government, have been holden under certain circumstances not to have rendered themselves personally responsible.—That the case here was as between the Appellants and the Respondent clearly a private transaction, for which neither the Government nor any other person, except the Defendant himself was or could be liable to the Plaintiffs;—that it was remarkable that the Defendant was authorized by the two Provincial Acts, of the 36 Geo. III. cap. 9 and 39th Geo. III. c. 5. to reimburse himself all such expences as he may incur for the purposes of those Acts, and allowed a shilling in the pound for his trouble; and that one of the duties which he is expressly directed to perform by those Acts is to institute the necessary prosecutions, the Expences of which he is of course to be allowed in his accounts as much as he would any other necessary disbursement in the performance of such duties.

It appears difficult to conceive therefore whether the dismissal of the cause by the Court below has proceeded from some idea that the Defendant had in some way or other pledged the credit of the Government for or rendered it in some measure liable for the expences of these proceedings, or upon what other principle it took place.

A similar difficulty will scarcely however occur again; the present Respondent who has since the commencement of this action instituted a great number of other proceedings in every respect similar, at present paying the whole of the fees to the Clerks of the Peace, at the moment of the performance of their duties.

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It is against this Judgment of dismissal that the present Appeal is instituted, there appearing as the Appellants humbly suggest, to be no more reason for their losing the Balance of one hundred and seventy pounds, thirteen shillings and four pence, which is now due to them out of the original sum of three hundred and seventy-one pounds, ten shillings and ten pence, than the whole of the rest of that sum or the fees which have been incurred since, and which are now paid regularly in consequence of their refusing longer to give credit to the Respondent.

Quebec, 10th July, 1814.